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10 Attorneys for Defendant
GOLI NUTRITION INC.

11
12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA
14

15 JEREMY BORGIA and JULIET OSMER,
individually and on behalf of all others similarly
16 situated,

Plaintiff,

17 v.

18 GOLI NUTRITION INC., A Delaware
19 Corporation,
20 Defendant.
21
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23
24
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27
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Case No. 2:20-CV-00981-KJM-DB

**DECLARATION OF KATHLEEN
POWER IN SUPPORT OF MOTION OF
DEFENDANT GOLI NUTRITION INC.
TO DISMISS UNDER FRCP 12(B)(6)**

Judge: Kimberly J. Mueller
Date: October 16, 2020
Time: 10:00 a.m.
Dept: Courtroom 3, 15th Floor

Complaint Filed: May 14, 2020

1 I, Kathleen Power, hereby declare as follows:

2 1. I am the Vice President, Sales and Strategy of Defendant Goli Nutrition Inc, a
3 Delaware corporation ("Goli"). I have worked at Goli since the company was formed in April 2019
4 and am very familiar with all facets of the Apple Cider Vinegar Gummies (the "Product") at issue
5 in this litigation.

6 2. I have reviewed the Class Action Complaint ("Complaint") filed by Plaintiffs Juliet
7 Osmer and Jeremy Borgia ("Plaintiffs") and am familiar with the claims and allegations at issue in
8 this litigation. I make this declaration in support of Goli's motion to dismiss Plaintiffs' Complaint
9 ("Motion"). The facts contained in this declaration are within my personal knowledge, and if called
10 to testify I could and would testify competently and truthfully to those facts.

11 3. The statement that is the subject of Plaintiffs' Complaint, *i.e.*, "2 gummies is equal
12 to 1 shot of Apple Cider Vinegar" (the "2=1 Statement"), has not appeared on any labels affixed to
13 bottles of the Product sold to consumers since June 2019. Even before June 2019, the 2=1 Statement
14 did not appear on any labels affixed to bottles of the Product shipped to brick and mortar retail stores
15 for sale. Rather, the version of the Product's label bearing the 2=1 Statement was only affixed to
16 some (but not all) bottles sold through online purchases from Goli's website prior to June 2019. Of
17 the products sold online prior to June 2019, only a relatively small number had a label including the
18 2=1 Statement.

19 4. After Goli was made aware of Plaintiffs' claims, Goli searched its records to identify
20 Plaintiffs' respective orders. Goli was able to locate Mr. Borgia's purchases. However, Goli has not
21 found any orders placed or purchases made by Ms. Osmer. Goli has searched for Ms. Osmer's order
22 using what Goli believes is Ms. Osmer's current mailing address, a previous address Ms. Osmer has
23 used, Ms. Osmer's known email addresses, and the names of persons Ms. Osmer may reside with at
24 her current address or otherwise be associated with. Despite its broad and comprehensive search,
25 Goli has found no orders or purchases in its records connected to Ms. Osmer.

26 5. Though omitted from the Complaint, the label of the Product contains a panel listing
27 various "Supplement Facts." Both before and after June 2019, the Supplement Facts on the label of
28 the Product has advised consumers that each gummy contains 500 milligrams (mg) of Apple Cider

1 Vinegar ("ACV"), and that 5% of the ACV content is comprised of Acetic Acid. Accordingly, one
2 two-gummy serving of the Product contains 1000mg of ACV, and 5% of that amount is Acetic Acid.

3 6. A true and correct copy of the label affixed to some bottles of the Product sold before
4 June 2019 is attached hereto as Exhibit A. A true and correct copy of the label affixed to bottles of
5 the Product sold after June 2019 is attached hereto as Exhibit B.

6 7. A true and correct copy of the United States Department of Agriculture
7 ("U.S.D.A.")'s FoodData Central webpage, which sets forth standards for Apple Cider Vinegar and
8 is publicly available at <https://fdc.nal.usda.gov/fdc-app.html#/food-details/173469/nutrients>, is
9 attached hereto as Exhibit C.

10 I declare under penalty of perjury under the laws of the State of California that the foregoing
11 is true and correct. Executed this 4th day of September, 2020, in Montreal, Canada.

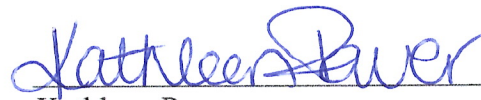
12 
13 Kathleen Power

EXHIBIT A

Taste The Apple. Not The Vinegar.

Goli Nutrition is an inventive, people focused nutrition company driven by the belief that happiness and wellness go hand in hand. Our gummies are Gluten Free, Organic, Gelatin Free and Vegan Friendly! Made with real apples, our ACV daily necessity is packed with additional vitamins B9, B12 and superfoods. Our Apple Cider Vinegar Gummies produce the same benefits of traditional Apple Cider Vinegar without the unpleasant taste!*

Made in an FDA registered, cGMP certified, and an allergen-free facility in the U.S.A.

Warning: Consult a physician if pregnant or nursing, taking medication or have a medical condition.
Keep out of reach of children.



@goligummy
#goligummy



Gluten-Free



Vegan



Non-GMO



Organic



Unfiltered

goli

NUTRITION

WORLD'S FIRST
**APPLE
CIDER
VINEGAR** | 60
GUMMIES **PIECES**

DIETARY SUPPLEMENT | with the mother

SUGGESTED USE:

Take 2-3 gummies per day. 2 gummies is equal to 1 shot of Apple Cider Vinegar.

Supplement Facts

Serving Size: 1 Gummy
Servings Per Container: 60

	Amount Per Serving	% Daily Value
Calories	12	
Total Carbohydrate	3.5 g	1%
Total Sugars	2 g	4%
Apple Cider Vinegar (5% Acetic Acid)	500 mg	*
Organic Red Root	40 mg	*
Organic Pomegranate	40 mg	*
Vitamin B9 (Folic Acid)	200 mcg DFE 110 mcg RDA Acid	50%
Vitamin B12 (Cyanocobalamin)	1.2 mcg	60%

* Daily Values not established.

Other Ingredients: Organic Tapioca Syrup, Water, Organic Cane Sugar, Pectin, Sodium Citrate, Citric Acid, Malic Acid, Natural Flavors, Organic Citrus, Organic Apple, Organic Blackberry for color and flavor.

Does NOT contain yeast, wheat, milk, eggs, gluten, soy, gelatin, peanuts, shellfish, dairy, artificial sweeteners, artificial colors, artificial flavors, artificial preservatives and sulfites.

* These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease.

DO NOT USE IF SAFETY SEAL IS DAMAGED OR MISSING.



Kosher
Parve

Distributed By:
Goli Nutrition Inc.
hello@goli.com
www.goli.com
1-888-346-1452



EXHIBIT B

Format : 8.25" x 3.125"

Taste The Apple. Not The Vinegar.

Goli Nutrition is an inventive, people focused nutrition company driven by the belief that happiness and wellness go hand in hand. Our goal was to create an easy, nutritious and delicious way for everyone to incorporate Apple Cider Vinegar into their daily routine. Our Apple Cider Vinegar Gummies produce the same age-old benefits of traditional Apple Cider Vinegar without the unpleasant taste! Goli Gummies are Gluten Free, Organic, Non-GMO, Gelatin Free and Vegan. Health Simple.

Made in an FDA registered, cGMP certified, and an allergen-free facility in the U.S.A.

Warning: Consult a physician if pregnant or nursing, taking medication or have a medical condition.

Keep out of reach of children.

f / @ /
 @goligummy
 #goligummy
 www.goli.com



goli
 NUTRITION

WORLD'S FIRST
**APPLE
 CIDER
 VINEGAR**
 GUMMIES

60
 PIECES

DIETARY SUPPLEMENT | with the mother

SUGGESTED USE:

1-2 gummies up to 3 times daily (enjoy up to 6 gummies a day).

Supplement Facts

Serving Size 1 Gummy
 Servings Per Container 60

Amount Per Gummy	%DV
Calories	15
Total Carbohydrate	4 g 1%*
Total Sugars	1 g †
Includes 1 g Added Sugars	2%*
Folate (Folic Acid)	200 mcg DFE 50%*
Vitamin B12 (Cyanocobalamin)	120 mcg folic acid 50%*
Vitamin B12 (Cyanocobalamin)	12 mcg 50%*
Apple Cider Vinegar (5% Acetic Acid)	500 mg †

* Percent Daily Values (DV) are based on a 2,000 calorie diet.
 † Daily Value (DV) not established.

Other Ingredients: Organic Cane Sugar, Organic Tapioca, Water, Pectin, Sodium Citrate Dihydrate, Citric Acid, Malic Acid, Natural Apple Flavor, Organic Carrot (for color), Organic Apple (for color), Organic Black Currant (for color), Organic Beet Root, Organic Pomegranate.

Does NOT contain: yeast, wheat, milk, eggs, gluten, soy, gelatin, peanuts, shellfish, dairy, artificial sweetener, artificial colors, artificial flavors, agave, artificial preservatives and salicylates.

Certified organic by: Oregon Tilth

*This statement has not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease.

DO NOT USE IF SAFETY SEAL IS DAMAGED OR MISSING.



Kosher
 Pareve



v1.4

Distributed By:
 Goli Nutrition Inc.
 hello@goli.com
 www.goli.com
 1-888-345-1452

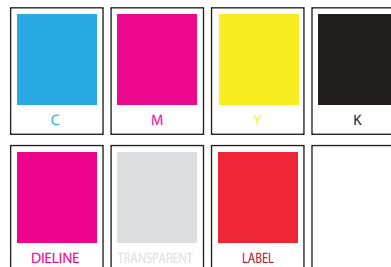


EXHIBIT C

Name	Amount	Unit	Deriv. By	N	Source	Min	Max	Median	Footnote	Last Update
Carbohydrate, by difference	0.93	g	Nutrient that is based on other nutrient/s; value used directly, ex. Nut.#204 from Nut.#298							3/1/2
Fiber, total dietary	0	g								1/1/1
Sugars, total including NLEA	0.4	g	Calculated							3/1/2
Sucrose	0	g	Manufacturer supplied(industry or trade association), Analytical data, incomplete documentation							3/1/2
Glucose (dextrose)	0.1	g	Manufacturer supplied(industry or trade association), Analytical data, incomplete documentation							3/1/2
Fructose	0.3	g	Manufacturer supplied(industry or trade association), Analytical data, incomplete documentation							3/1/2
Lactose	0	g	Manufacturer supplied(industry or trade association), Analytical data, incomplete documentation							3/1/2
Maltose	0	g	Manufacturer supplied(industry or trade association), Analytical data, incomplete documentation							3/1/2

Name	Amount	Unit	Deriv. By	n	Source	Min	Max	Median	Footnote	Last Update
Galactose	0	g	Assumed zero (Insignificant amount or not naturally occurring in a food, such as fiber in meat)							3/1/2
Calcium, Ca	7	mg	Aggregated data involving combinations of data with only source codes 1 and 12 and/or 13			5	8			3/1/2
Iron, Fe	0.2	mg	Aggregated data involving combinations of data with only source codes 1 and 12 and/or 13			0.11	0.28			3/1/2
Magnesium, Mg	5	mg	Analytical	3		4	5			2/1/2
Phosphorus, P	8	mg	Analytical	3		8	8			2/1/2
Potassium, K	73	mg	Aggregated data involving combinations of data with only source codes 1 and 12 and/or 13			59	93			3/1/2
Sodium, Na	5	mg	Aggregated data involving combinations of data with only source codes 1 and 12 and/or 13			5	8			3/1/2
Zinc, Zn	0.04	mg	Analytical	3		0.03	0.05			2/1/2
Copper, Cu	0.008	mg	Analytical	3		0.007	0.008			2/1/2
Manganese, Mn	0.249	mg	Analytical	3		0.135	0.31			2/1/2
Selenium, Se	0.1	µg	Calculated from different food; From average values for food category; No adjustment; Retention factors not used							12/1/1
Vitamin C, total ascorbic acid	0	mg								1/1/1
Thiamin	0	mg								1/1/1

Name	Amount	Unit	Deriv. By	Min	Max	Median	Footnote	Last Update
Riboflavin	0	mg						1/1/1
Niacin	0	mg						1/1/1
Pantothenic acid	0	mg						1/1/1
Vitamin B-6	0	mg						1/1/1
Folate, total	0	µg						1/1/1
Folic acid	0	µg	Assumed zero (Insignificant amount or not naturally occurring in a food, such as fiber in meat)					1/1/2
Folate, food	0	µg						3/1/2
Folate, DFE	0	µg	Calculated					11/1/2
Choline, total	0	mg	Assumed zero (Insignificant amount or not naturally occurring in a food, such as fiber in meat)					11/1/2
Vitamin B-12	0	µg	Assumed zero (Insignificant amount or not naturally occurring in a food, such as fiber in meat)					1/1/1
Vitamin B-12, added	0	µg	Assumed zero (Insignificant amount or not naturally occurring in a food, such as fiber in meat)					9/1/2
Vitamin A, RAE	0	µg						3/1/2
Retinol	0	µg	Assumed zero (Insignificant amount or not naturally occurring in a food, such as fiber in meat)					6/1/2

Name	Amount	Unit	Deriv. By	n	Source	Min	Max	Median	Footnote	Last Upda
Carotene, beta	0	µg	Assumed zero (Insignificant amount or not naturally occurring in a food, such as fiber in meat)							12/1/2
Carotene, alpha	0	µg	Assumed zero (Insignificant amount or not naturally occurring in a food, such as fiber in meat)							12/1/2
Cryptoxanthin, beta	0	µg	Assumed zero (Insignificant amount or not naturally occurring in a food, such as fiber in meat)							12/1/2
Vitamin A, IU	0	IU								1/1/1
Lycopene	0	µg	Assumed zero (Insignificant amount or not naturally occurring in a food, such as fiber in meat)							12/1/2
Lutein + zeaxanthin	0	µg	Assumed zero (Insignificant amount or not naturally occurring in a food, such as fiber in meat)							12/1/2
Vitamin E (alpha-tocopherol)	0	mg	Assumed zero (Insignificant amount or not naturally occurring in a food, such as fiber in meat)							12/1/2
Vitamin E, added	0	mg	Assumed zero (Insignificant amount or not naturally occurring in a food, such as fiber in meat)							9/1/2

Name	Amount	Unit	Deriv. By	Min	Max	Median	Footnote	Last Update
Vitamin D (D2 + D3), International Units	0	IU	Assumed zero (Insignificant amount or not naturally occurring in a food, such as fiber in meat)					2/1/2
Vitamin D (D2 + D3)	0	µg	Assumed zero (Insignificant amount or not naturally occurring in a food, such as fiber in meat)					11/1/2
Vitamin K (phylloquinone)	0	µg	Based on another form of the food or similar food; Concentration adjustment; Solids; Retention factors not used					12/1/2
Fatty acids, total saturated	0	g						1/1/1
4:0	0	g						3/1/1
6:0	0	g						3/1/1
8:0	0	g						3/1/1
10:0	0	g						1/1/1
12:0	0	g						1/1/1
14:0	0	g						1/1/1
16:0	0	g						1/1/1
18:0	0	g						1/1/1
Fatty acids, total monounsaturated	0	g						1/1/1
16:1	0	g						1/1/1
18:1	0	g						1/1/1
20:1	0	g						1/1/1
22:1	0	g						3/1/1
Fatty acids, total polyunsaturated	0	g						1/1/1
18:2	0	g						1/1/1
18:3	0	g						1/1/1

Name	Amount	Unit	Deriv. By	n	Source	Min	Max	Median	Footnote	Last Update
18:4	0	g								3/1/1
20:4	0	g								1/1/1
20:5 n-3 (EPA)	0	g								3/1/1
22:5 n-3 (DPA)	0	g								3/1/1
22:6 n-3 (DHA)	0	g								3/1/1
Fatty acids, total trans	0	g	Assumed zero (Insignificant amount or not naturally occurring in a food, such as fiber in meat)							3/1/2
Cholesterol	0	mg	Assumed zero (Insignificant amount or not naturally occurring in a food, such as fiber in meat)							1/1/1
Tryptophan	0	g								1/1/1
Threonine	0	g								1/1/1
Isoleucine	0	g								1/1/1
Leucine	0	g								1/1/1
Lysine	0	g								1/1/1
Methionine	0	g								1/1/1
Cystine	0	g								1/1/1
Phenylalanine	0	g								1/1/1
Tyrosine	0	g								1/1/1
Valine	0	g								1/1/1
Arginine	0	g								1/1/1
Histidine	0	g								1/1/1
Alanine	0	g								1/1/1
Aspartic acid	0	g								1/1/1
Glutamic acid	0	g								1/1/1
Glycine	0	g								1/1/1
Proline	0	g								1/1/1

9/4/2020FoodData Central

Case 2:20-cv-00981-KJM-DB Document 13-2 Filed 09/04/20 Page 16 of 18

Name	Amount	Unit	Deriv. By	n	Source	Min	Max	Median	Footnote	Last Upda
Serine	0	g								1/1/1
Alcohol, ethyl	0	g								1/1/1
Caffeine	0	mg	Assumed zero (Insignificant amount or not naturally occurring in a food, such as fiber in meat)							12/1/2
Theobromine	0	mg	Assumed zero (Insignificant amount or not naturally occurring in a food, such as fiber in meat)							12/1/2

[Return to Top](#)

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- USA.gov
- WhiteHouse.gov





FoodData Central Search Results

ARS HOME › FOODDATA CENTRAL › VINEGAR, CIDER (SR LEGACY, 173469)

Vinegar, cider

SR Legacy, released in April 2018, is the final release of this data type and will not be updated. For more recent data, users should search other data types in FoodData Central.

Data Type: SR Legacy

Food Category: Spices and Herbs

FDC ID: 173469

NDB Number: 2048

Footnote: Contains 5% acetic acid. Total proximates do not equal 100%.

FDC Published: 4/1/2019

Nutrients		Measures				
Amount	Unit	Measure Description	Modifier	Average Weight (g)	n	Footnote
1			tbsp	14.9		
1			cup	239		
1			tsp	5	23	